IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA.No.1887 of 1994

DATE OF ORDER: 20.4.2007

State of Punjab

...Petitioner(s)

Versus

Sukhdev Singh

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. Satish Bhanot, Sr. DAG, Punjab.

Mr. J.S. Maanipur, Advocate.

M.M. AGGARWAL,J

This is regular second appeal filed by State of Punjab. The facts of the case are that plaintiff-respondent Sukhdev Singh filed suit for declaration challenging order of dismissal dated 24.9.1984. That suit was decreed by the trial Court. State of Punjab had filed appeal, which was dismissed by Additional District Judge, Ludhiana vide impugned judgment dated 16.11.1992.

The law point involved in the present appeal is as to whether remaining absent for a long period of one year and seven months is gravest misconduct inviting the penalty of dismissal from service as per PPR 16.2 (1).

It is admitted case that plaintiff-respondent had remained absent from duty for one year and seven months and regular inquiry had been held and show cause notice issued before imposing punishment.

Rule 16.2 (1) reads as under:

> "16.2 Dismissal (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to be length of service of the offender and his claim to pension."

In this case, plaintiff-respondent had rendered about 28 years of service when this order was made. The order of dismissal does not show anywhere that remaining absent for one year and seven years was gravest act of misconduct proving incorrigibility and complete unfitness for police service. There is no mention that service rendered and claim to pension had been taken into consideration.

On behalf of the appellant-State, a Division Bench judgment of this Court reported in The state of Haryana and Others v. Gurdev Singh, 1981 (3) SLR, 130 was relied and it was argued that it was not necessary for the punishing authority to specifically mention in the impugned order about the length of service, which was already a part of record and was well-known. Another judgment of Hon'ble Supreme Court reported in State of UP v. Ashok Kumar Singh, Service Cases Today, SC, 138 had also been relied on behalf of appellant-State and it was argued that when police constable remained absent from duty, then it will amount to grave misconduct.

Counsel for the respondent-defendant had relied on a Division Bench Judgment reported in Ranbir Singh v. State of Punjab and Others, 1999(4) RSJ 48 in which police official had put in just 23 years of service and it had been held that when the length of service and claim to pension was not taken into consideration then impugned order of dismissal was liable to be set aside.

It was argued that there are concurrent findings of two courts below and this Court should not interfere.

Counsel for the respondent-defendant had also relied on another judgment of this Court reported in Punjab State through the Secy v. Gurmukh Singh and Others, 1999(4) RSJ, 187. He had also relied on a judgment of this Court reported in Ex. Constable Rameshwar Dayal v. The State of Haryana and others, 1999(4), 282 where it had been held that the punishing authority had not taken into account the length of service and then the order of dismissal was converted to compulsory retirement. In that case, the Constable had put in 22 years of service.

Admittedly plaintiff-respondent had remained absent for a long time i.e one year and seven months. He was member of disciplined force and the remaining absent for such a long time amounted to grave

misconduct but when punishment of dismissal is inflicted then length of service and claim to pension should have been taken into account, which was not considered.

In the facts and circumstances of the case, where after putting in 28 years of service, plaintiff-respondent had definitely become entitled to pension, it is a fit case where punishment of dismissal from service should be converted to compulsory retirement as per Punjab Civil Service., (Punishment and Appeal) Rules

As such, appeal filed by the State is partly accepted. Punishment of dismissal from service shall stand converted to compulsory retirement. Plaintiff-respondent will be entitled to appropriate benefits to which he may be entitled.

April 20, 2007 (M.M. AGGARWAL)
manoj JUDGE